

(1920) 07 CAL CK 0043
In the Calcutta High Court

Brindabun Behari Roy

APPELLANT

Vs

Bhupali Bhusan Adhikari

RESPONDENT

Date of Decision : 21-07-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 174, 174(2)

Citation : 62 Ind. Cas. 743

Hon'ble Judges : Walmsley, J;Greaves, J

Bench : Division Bench

Judgement

Walmsley, J.—The object of this suit was to set aside an order passed u/s 174(2) of the Bengal Tenancy Act annulling a sale which had been held in execution of a rent-decree. The plaintiff is the auction-purchaser. Defendant No. 3, the present appellant, and his brother were the judgment-debtors. After the sale was held, a deposit was made u/s 174 and the plaintiff withdrew the money which he had paid at the sale. A year later he brought the present suit to have the order cancelling the sale set aside. The question whether such a suit is maintainable was considered by a Bench of this Court in the case of Kabilaso Kore v. Raghu Nath Saran Singh 18 C. 481 : 9 Ind. Dec. (N.S.) 321. The learned Subordinate Judge says that that ruling is no longer good law because of the modification of Section 170 of the Bengal Tenancy Act. I am quite unable to see what bearing the change in Section 170 introduced by the Act of 1907 has on the judgment in the case I have mentioned; and the learned Vakil for the respondent has failed to make clear the meaning of what the Subordinate Judge says. In my opinion it is settled by the case I have quoted that a suit does not lie to set aside an order passed u/s 174 of the Bengal Tenancy Act.

2. I, therefore, think that this appeal must be allowed with costs, the judgment and decree of the lower Appellate Court set aside and the decree of the first Court restored, and the suit dismissed. Defendant No. 3, Brindaban Behari Roy, will recover costs in this Court and in the lower Appellate Court from the plaintiffs.

Greaves, J.

3. I agree.